

State of Utah
Administrative Rule Analysis
Revised May 2020

NOTICE OF PROPOSED RULE		
TYPE OF RULE: New ____; Amendment ____; Repeal ____; Repeal and Reenact ____		
Title No. - Rule No. - Section No.		
Utah Admin. Code Ref (R no.):	R307-415-9	Filing No. (Office Use Only)
Changed to Admin. Code Ref. (R no.):	R	

Agency Information

1. Department:	Environmental Quality	
Agency:	Air Quality	
Room no.:	Fourth Floor	
Building:	Multi Agency State Office Building	
Street address:	195 N 1950 W	
City, state:	Salt Lake City, UT 84116	
Mailing address:	PO Box 144820	
City, state, zip:	Salt Lake City, UT 84116-4820	
Contact person(s):		
Name:	Phone:	Email:
Liam Thrailkill	801-536-4419	lthrailkill@utah.gov
Please address questions regarding information on this notice to the agency.		

General Information

2. Rule or section catchline:
Fees for Operating Permits
3. Purpose of the new rule or reason for the change (If this is a new rule, what is the purpose of the rule? If this is an amendment, repeal, or repeal and reenact, what is the reason for the filing?):
Due to Senate Bill 88 being passed by the Utah State Legislature in 2020, amendments were needed in R307-415-9 to bring the rule in line with Utah Code.
4. Summary of the new rule or change:
<p>A general amendment throughout the subsections of R307-415-9 allows for additional fees to an annual emissions. The previous statute language only allowed a uniform annual fee based on tons emitted. Examples of the fees that may be allowed by these language changes could include annual fees, varying fees for different source sizes and types, administrative fees, etc. All fees are proposed annually with the Department of Environmental Quality's fee package that has a public comment period and public hearing each Fall, and then goes to the Legislature for approval during the annual legislative session. Additionally, there were multiple amendments throughout R307-415-9 to align with the state statute and clean up outdated language.</p> <p>A public hearing is set for Monday, August 3, 2020. Further details may be found below. The hearing will be cancelled should no request for one be made by Friday, July 31, 2020, at 5:00PM MT. The final status of the public hearing will be posted on Friday, July 31, after 5:00PM MT. The status of the public hearing may be checked at the following website location under the corresponding rule.</p> <p>https://deq.utah.gov/public-notices-archive/air-quality-rule-plan-changes-open-public-comment</p> <p>Interested persons can participate electronically, via the internet:</p> <p>https://meetingsamer15.webex.com/meetingsamer15/j.php?MTID=me86cb2376056a51b26bef1de0d6827d4</p> <p>Meeting number: 126 786 2510 Meeting password: w23pJRe9sii (92375739 from phones and video systems) Join by Phone: 1-408-418-9388</p>

Fiscal Information

5. Aggregate anticipated cost or savings to:
A) State budget:
There are no direct fiscal impacts to the state budget as a result of this rulemaking. The only fiscal impacts will come from the

additional fees to an annual emissions fee that are now allowed as a result of this rulemaking. However, those fees are proposed from the Department of Environmental Quality's fee package which is sent to the Legislature for approval. Therefore, there are no fiscal impacts resulting from these amendments.

B) Local governments:

Local governments are not impacted from this rulemaking and therefore experience no fiscal impacts.

C) Small businesses ("small business" means a business employing 1-49 persons):

There are no direct fiscal impacts to small businesses as a result of this rulemaking. The only fiscal impacts will come from the additional fees to an annual emissions fee that are now allowed as a result of this rulemaking. However, those fees are proposed from the Department of Environmental Quality's fee package which is sent to the Legislature for approval. Therefore, there are no fiscal impacts resulting from these amendments.

D) Non-small businesses ("non-small business" means a business employing 50 or more persons):

There are no direct fiscal impacts to non-small businesses as a result of this rulemaking. The only fiscal impacts will come from the additional fees to an annual emissions fee that are now allowed as a result of this rulemaking. However, those fees are proposed from the Department of Environmental Quality's fee package which is sent to the Legislature for approval. Therefore, there are no fiscal impacts resulting from these amendments.

E) Persons other than small businesses, non-small businesses, state, or local government entities ("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an **agency**):

The rule amendments to R307-415-9 do not apply to persons other than small businesses, non-small businesses, state, or local government entities and therefore have no fiscal impacts on them.

F) Compliance costs for affected persons:

There are no additional compliance costs for affected persons as a result of this rulemaking.

G) Regulatory Impact Summary Table (This table only includes fiscal impacts that could be measured. If there are inestimable fiscal impacts, they will not be included in this table. Inestimable impacts will be included in narratives above.)

Regulatory Impact Table			
Fiscal Cost	FY2021	FY2022	FY2023
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Cost	\$0	\$0	\$0
Fiscal Benefits			
State Government	\$0	\$0	\$0
Local Governments	\$0	\$0	\$0
Small Businesses	\$0	\$0	\$0
Non-Small Businesses	\$0	\$0	\$0
Other Persons	\$0	\$0	\$0
Total Fiscal Benefits	\$0	\$0	\$0
Net Fiscal Benefits	\$0	\$0	\$0

H) Department head approval of regulatory impact analysis:

The head of the Department of Environmental Quality, L. Scott Baird, has reviewed and approved of this fiscal analysis.

6. A) Comments by the department head on the fiscal impact this rule may have on businesses:

This rulemaking, as required by Senate Bill 88 in the 2020 Utah Legislative Session, has no fiscal impact on businesses. The only changes may come in the future from the allowance of additional fees to an annual emissions fee, but those fees are enacted by the Legislature as proposed by the Department of Environmental Quality in the fee package sent each general session.

B) Name and title of department head commenting on the fiscal impacts:

L. Scott Baird, Executive Director

Citation Information

7. This rule change is authorized or mandated by state law, and implements or interprets the following state and

federal laws. State code or constitution citations (required):		
19-2-104	19-2-108	

Incorporations by Reference Information

(If this rule incorporates more than two items by reference, please include additional tables.)

8. A) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	First Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

B) This rule adds, updates, or removes the following title of materials incorporated by references (a copy of materials incorporated by reference must be submitted to the Office of Administrative Rules; *if none, leave blank*):

	Second Incorporation
Official Title of Materials Incorporated (from title page)	
Publisher	
Date Issued	
Issue, or version	

Public Notice Information

9. The public may submit written or oral comments to the agency identified in box 1. (The public may also request a hearing by submitting a written request to the agency. The agency is required to hold a hearing if it receives requests from ten interested persons or from an association having not fewer than ten members. Additionally, the request must be received by the agency not more than 15 days after the publication of this rule in the Utah State Bulletin. See Section 63G-3-302 and Rule R15-1 for more information.)

A) Comments will be accepted until (mm/dd/yyyy): 08/03/2020

B) A public hearing (optional) will be held:

On (mm/dd/yyyy):	At (hh:mm AM/PM):	At (place):
08/03/2020	11:00AM MST	Multi Agency State Office Building Division of Air Quality, Fourth Floor 195 N 1950 W Salt Lake City, UT 84116

10. This rule change MAY become effective on (mm/dd/yyyy): 09/03/2020

NOTE: The date above is the date on which this rule MAY become effective. It is NOT the effective date. After the date designated in Box 10, the agency must submit a Notice of Effective Date to the Office of Administrative Rules to make this rule effective. Failure to submit a Notice of Effective Date will result in this rule lapsing and will require the agency to start the rulemaking process over.

Agency Authorization Information

To the agency: Information requested on this form is required by Sections 63G-3-301, 302, 303, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying publication in the *Utah State Bulletin*, and delaying the first possible effective date.

Agency head or designee, and title:	Bryce Bird	Date (mm/dd/yyyy):	05/18/2020
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R307. Environmental Quality, Air Quality.

R307-415. Permits: Operating Permit Requirements.

R307-415-9. Fees for Operating Permits.

(1) Definitions. The following definition applies only to Subsection R307-415-9: "Allowable emissions" are emissions based on the potential to emit stated by the director in an approval order, the State Implementation Plan or an operating permit.

(2) Applicability. As authorized by Section ~~[19-2-109.1]~~19-1-201, all Part 70 sources must pay ~~[an] annual fees[.] to support the operating permit program.[based on annual emissions of all chargeable pollutants.]~~

~~[(a) Any Title IV affected source that has been designated as a "Phase I Unit" in a substitution plan approved by the Administrator under 40 CFR Section 72.41 shall be exempted from the requirement to pay an emission fee from January 1, 1995 to December 31, 1999.]~~

(3) Calculation of Annual Emission Fee for a Part 70 Source.

(a) The emission fee shall be calculated for all chargeable pollutants emitted from a Part 70 source, even if only one unit or one chargeable pollutant triggers the applicability of Rule R307-415 to the source.

(i) Fugitive emissions and fugitive dust shall be counted when determining the emission fee for a Part 70 source.

(ii) An emission fee shall not be charged for emissions of any amount of a chargeable pollutant if the emissions are already accounted for within the emissions of another chargeable pollutant.

(iii) An emission fee shall not be charged for emissions of any one chargeable pollutant from any one Part 70 source in excess of 4,000 tons per year.

(iv) Emissions resulting directly from an internal combustion engine for transportation purposes or from a non-road vehicle shall not be counted when calculating chargeable emissions for a Part 70 source.

(b) The emission fee portion of the total fee for an existing source prior to the issuance of an operating permit, shall be based on the most recent emission inventory available unless a Part 70 source elected, prior to July 1, 1992, to base the fee for one or more pollutants on allowable emissions established in an approval order or the State Implementation Plan.

(c) The emission fee portion of the total fee after the issuance or renewal of an operating permit shall be based on the most recent emission inventory available unless a Part 70 source elects, prior to the issuance or renewal of the permit, to base the fee for one or more chargeable pollutants on allowable emissions for the entire term of the permit.

(d) When a new Part 70 source begins operating, it shall pay ~~[an]the~~ emission fee portion of the total fee for that fiscal year, prorated from the date the source begins operating plus any additional Part 70 fees. The emission fee portion of the total fee for a new Part 70 source shall be based on allowable emissions until that source has been in operation for a full calendar year, and has submitted an inventory of actual emissions. If a new Part 70 source is not billed in the first billing cycle of its operation, the emission fee plus any additional fees shall be calculated using the emissions that would have been used had the source been billed at that time. This fee shall be in addition to any subsequent emission fees.

(e) When a Part 70 source is no longer subject to Part 70, the emission fee portion of the total fee shall be prorated to the date that the source ceased to be subject to Part 70. If the Part 70 source has already paid an emission fee that is greater than the prorated fee, the balance of the emission fee will be refunded. No other Part 70 fees shall be refunded.

(i) If that Part 70 source again becomes subject to the emission fee requirements, it shall pay an emission fee for that fiscal year prorated from the date the source again became subject to the emission fee requirements plus any additional fees typically charged for Part 70 sources for that year. The fee shall be based on the emission inventory during the last full year of operation. The emission fee shall continue to be based on actual emissions reported for the last full calendar year of operation until that source has been in operation for a full calendar year and has submitted an updated inventory of actual emissions.

(ii) If a Part 70 source has chosen to base the emission fee on allowable emissions, then the prorated fee shall be calculated using allowable emissions.

(f) Modifications. The method for calculating the emission fee for a source shall not be affected by modifications at that source, unless the source demonstrates to the director that another method for calculating chargeable emissions is more representative of operations after the modification has been made.

(g) The director may presume that potential emissions of any chargeable pollutant for the source are equivalent to the actual emissions for the source if recent inventory data are not available.

(4) Collection of Fees.

(a) The ~~[emission]~~Part 70 fees ~~[is]~~are due on October 1 of each calendar year or 45 days after the source has received notice of the amount of the fee, whichever is later.

(b) The director may require any owner or operator of the source ~~[person]~~ who fails to pay the annual ~~[emission]~~fees by the due date to pay interest on the fee and a penalty under Subsection 19-2-109.1(4)(~~(7)~~)(a) or revoke the operating permit under Subsection 19-2-109.1(4)(b).

(c) An owner or operator ~~[person]~~ may contest ~~[an emission]~~ a Part 70 fee assessment, or associated penalty, under 19-2-109.1(~~(5)~~)(~~(8)~~).

(d) To reinstate the permit revoked under Subsection 19-2-109.1(4)(b), an owner or operator shall pay the outstanding fees, a penalty of not more than 50% of outstanding fees, and interests on the outstanding fees computed at 12% annually.

KEY: air pollution, greenhouse gases, operating permit, emission fees

Date of Enactment or Last Substantive Amendment: February 4, 2016

Notice of Continuation: May 15, 2017

Authorizing, and Implemented or Interpreted Law: 19-2-109.1; 19-2-104